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5

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
8

9 Case No. SACV11-01309-DOC(ANx)

10 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. DBA
11 GLIDEWELL LABORATORIES, a
California corporation,

12 Plaintiff

13 vs.

14 KEATING DENTAL ARTS, INC., a
15 California corporation,

16 Defendant.
17

**PLAINTIFF'S/COUNTER-
DEFENDANT GLIDEWELL
LABORATORIES ANSWER TO
COUNTERCLAIMS OF
DEFENDANT/COUNTER-
PLAINTIFF KEATING'S
SECOND AMENDED ANSWER
TO COMPLAINT**

18 KEATING DENTAL ARTS, INC., a
19 California corporation,

20 Counter-Plaintiff,

21 vs.

22 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC., DBA
23 GLIDEWELL LABORATORIES, a
California corporation, and
DOES 1 THROUGH 5, inclusive,

24 Counter-Defendants.
25

26
27 Plaintiff/Counter-Defendant Glidewell Laboratories hereby answers the
28 counterclaims of the second amended Answer of Keating as follows:

GENERAL ALLEGATIONS

1
2
3 1. Plaintiff admits the allegations of paragraph 36 of Defendant's
4 counterclaims.

5
6 2. Plaintiff admits the allegations of paragraph 37 of Defendant's
7 counterclaims.

8
9 3. Plaintiff admits the allegations of paragraph 38 of Defendant's
10 counterclaims.

11
12 4. Plaintiff admits the allegations of paragraph 39 of Defendant's
13 counterclaims.

14
15 5. Plaintiff admits the allegations of paragraph 40 of Defendant's
16 counterclaims.

17
18 6. Plaintiff admits the allegations of paragraph 41 of Defendant's
19 counterclaims.

20
21 7. Plaintiff lacks knowledge or information sufficient to form a
22 belief about the truth of the allegations of paragraph 42 in regard to KDA's
23 business methods, advertising, customers and motivations and therefore denies
24 such allegations.

25
26 8. Plaintiff admits the allegations of paragraph 43 of Defendant's
27 counterclaims.

1 9. Plaintiff denies the allegation in paragraph 44 that the terms
2 “bruxer” and “BRUXZIR” are phonetically the same. Otherwise Plaintiff
3 admits the allegations of paragraph 44 of Defendant’s counterclaims.
4

5 10. Plaintiff denies the allegation in paragraph 45 that it sued Keating
6 because Keating instead elected to continue using BRUX and BRUXER on
7 the basis that BRUX and BRUXER are generic terms and cannot be
8 exclusively appropriated by any competitor in the dental industry. Otherwise,
9 Plaintiff admits the allegations of paragraph 45 of Defendant’s counterclaims.
10

11 11. Plaintiff admits the allegations of paragraph 46 of Defendant’s
12 counterclaims.
13

14 12. Plaintiff lacks knowledge or information sufficient to form a
15 belief about the truth of the allegations of paragraph 47 of Defendant’s
16 counterclaims and therefore denies same.
17

18 13. Plaintiff denies that BRUXER is used to describe and/or refer to
19 treatments for bruxism. Otherwise, Plaintiff admits the allegations of
20 paragraph 48 of Defendant’s counterclaims.
21

22 14. Plaintiff denies that there is a direct and descriptive connection
23 between the words BRUXER, BRUX and BRUXING and similar “bruxism” –
24 based words and dental crowns and other restorations. Plaintiff admits that
25 others have registered trademarks using the word BRUX but denies that
26 except for Plaintiff and Defendant, any have registered trademarks using the
27 word BRUX for use on dental crowns or other restorations. Otherwise
28

1 Plaintiff admits the allegations of paragraph 49 of Defendant's counterclaims.

2
3 15. Plaintiff admits the allegations of paragraph 50 of Defendant's
4 counterclaims.

5
6 16. Plaintiff denies that the table presented in Defendant's
7 counterclaims shows that any other companies have used BRUX in any
8 trademark for crowns or other restorations as alleged in paragraph 51 of
9 Defendant's counterclaims. Plaintiff admits that it began marketing under the
10 trademark BRUXZIR in June 2009.

11
12 17. Plaintiff denies the allegations of paragraph 52 of Defendant's
13 counterclaims. Plaintiff specifically denies that it is attempting to appropriate
14 the term BRUX to the exclusion of other competitors or to encompass all use
15 of a generic term.

16
17 18. Plaintiff is currently without sufficient knowledge or information
18 to form a belief as to the truth of the allegations of paragraph 53 of
19 Defendant's counterclaims and therefore denies same.

20
21 19. Plaintiff denies the allegations of paragraph 54 that Defendant's
22 trademark has a "main trademark". Plaintiff lacks sufficient knowledge or
23 information to form a belief as to the truth of the remaining allegations of
24 paragraph 54 of Defendant's counterclaims.

1 27. Plaintiff denies the allegations of paragraph 62 of Defendant's
2 counterclaims.

3
4 28. Plaintiff denies the allegations of paragraph 63 of Defendant's
5 counterclaims.

6
7 THIRD COUNTERCLAIM
8

9 29. Plaintiff incorporates by reference its answers to the general
10 allegations and first and second counterclaim allegations of Defendant's
11 counterclaims.

12
13 30. Plaintiff denies the allegations of paragraph 65 of Defendant's
14 counterclaims.

15
16 31. Plaintiff denies the allegations of paragraph 66 of Defendant's
17 counterclaims.

18
19 32. Plaintiff denies the allegations of paragraph 67 of Defendant's
20 counterclaims.

21
22 33. Plaintiff denies the allegations of paragraph 68 of Defendant's
23 counterclaims.

24
25 34. Plaintiff denies the allegations of paragraph 69 of Defendant's
26 counterclaims.

1 35. Plaintiff denies the allegations of paragraph 70 of Defendant's
2 counterclaims.

3
4 FOURTH COUNTERCLAIM

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6 36. Plaintiff incorporates by reference its answers to the general
7 allegations and first, second and third counterclaim allegations of Defendant's
8 counterclaims.

9
10 37. Plaintiff denies the allegations of paragraph 72 of Defendant's
11 counterclaims.

12
13 38. Plaintiff denies the allegations of paragraph 73 of Defendant's
14 counterclaims.

15
16 39. Plaintiff denies the allegations of paragraph 74 of Defendant's
17 counterclaims.

18
19 40. Plaintiff denies the allegations of paragraph 75 of Defendant's
20 counterclaims.

21
22
23 AFFIRMATIVE DEFENSES

24
25 41. Plaintiff's BRUXZIR[®] trademark is a very strong mark widely
26 recognized in the dental industry. Plaintiff has sold over \$100 million dollars
27 in BRUXZIR[®] dental restoration products over the past three and one-half (3
28

1 1/2) years. Therefore, the scope of Plaintiff's mark should be broadly
2 construed.

3
4 42. The allegation that Plaintiff is, by enforcement of its trademark,
5 attempting to monopolize the zirconia crown industry is manifestly
6 nonsensical. There are virtually unlimited words and word combinations that
7 could be selected by Plaintiff's competitors as non-infringing trademarks for
8 such products and many have. Plaintiff is entitled to enforce its trademark
9 rights against those competitors who attempt to blatantly encroach on the
10 goodwill in the BRUXZIR[®] mark and ride on the coattails of Plaintiff's
11 success.

12
13 43. As used in Plaintiff's trademark BRUXZIR[®], the term BRUX is
14 merely suggestive of durability, hardness and toughness, it is neither generic
15 nor descriptive. As used in Defendant's trademark KDZ BRUXER, the term
16 BRUXER, even when improperly considered separately from the mark taken
17 as a whole, is not generic for dental restorations. It is a term used by
18 Defendant in its mark specifically to engender public confusion with
19 Plaintiff's mark in regard to monolithic zirconia dental restorations.

20
21 44. Even if Plaintiff's BRUXZIR[®] trademark is deemed to be
22 descriptive of its use by dentists in treating certain patients or descriptive of its
23 constituent ingredients, it has clearly attained secondary meaning in the dental
24 industry and is therefore a valid and enforceable trademark.

PROOF OF SERVICE

I am a resident of the state of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is 17961 Sky Park Circle, Suite 38-E, Irvine, California 92614. On October 26, 2012, I served the following document(s) in the manner indicated:

1. PLAINTIFF'S/COUNTER-DEFENDANT GLIDEWELL
LABORATORIES ANSWER TO COUNTERCLAIMS OF
DEFENDANT/COUNTER-PLAINTIFF KEATING'S
SECOND AMENDED ANSWER TO COMPLAINT

- ☒ via electronic means by the Court's electronic filing system CM/ECF.
- ☐ by placing the document(s) listed above in a sealed envelope to the person at the address set forth below by postage prepaid United States First Class United States mail on the same date set out below.

Lynda J. Zadra-Symes
Jeffrey L. Van Hoosear
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, Fourteenth Floor
Irvine, CA 92614

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed October 26, 2012 at Irvine, California.

By: /s/ Jodie Miller

Jodie Miller

Case No.: SACV11-01309-DOC(ANx)
CERTIFICATE OF SERVICE